

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
)
)
v.) Criminal No. 18-292
)
ROBERT BOWERS)

**MOTION TO EXTEND THE
TIME FOR FILING PRETRIAL MOTIONS**

Defendant, Robert Bowers, through undersigned counsel, respectfully requests that the pretrial motions deadline be continued to October 22, 2020 – a date that both accommodates the current briefing schedule set by the Court on June 25, 2020, and takes into account the need for the filing of additional pretrial motions. In support of this motion, counsel states as follows:

1. On February 11, 2019, the Court arraigned Robert Bowers on a superseding indictment alleging violations of 18 U.S.C. §§ 247(a)(2), 247(d)(1), and 247(d)(3); 18 U.S.C. §§ 249(a)(1)(B)(i) and 249(a)(1)(B)(ii); and 18 U.S.C. §§ 924(c)(1)(A)(i), 924(c)(1)(A)(ii), 924(c)(1)(A)(iii), and 924(j)(1).

2. Pursuant to this Court's prior order, pretrial motions are currently due on or before July 22, 2020. (Doc. 225).

3. Due to the nature of the prosecution, which includes the government's Notice of Intent to Seek the Death Penalty (*see* Doc. 86), and the voluminous discovery, this Court has previously concluded that this case is "complex" within the

meaning of the Speedy Trial Act, 18 U.S.C § 3161(h)(7)(B)(ii). (Docs. 52, 85,108 and 225).

4. Mr. Bowers has already filed multiple pretrial motions, including Motion for Corrective Action Regarding FBI Interference with Defense Access to Potential Witnesses (Doc. 60); Motion for Protective Order to Prohibit Prosecution Access to Defendant's Pretrial Detention Records (Doc. 101); Motion to Compel Production of "Filter Team" Protocol and Procedures and "Unfiltered" Records (Doc. 102); Motion to Compel the Government to Make Physical Evidence Available for Defense Review (Doc. 111); Motion for Bill of Particulars (Doc. 152); Motion to Compel the Government to Confirm Production of all Rule 16 and *Brady* Material in the Possession of the Prosecution Team (Doc. 153); Motion to Compel Production of Discovery Under Fed.R.Crim.P.16 and *Brady* Line of Cases (Doc.154); Motion for an Order Requiring the Government to Comply with Federal Rule of Criminal Procedure 12(b)(4)(B) (Doc 155); Motion to Produce Evidence that the Government Intends to Use Under Federal Rule of Evidence 404(b) (Doc. 156); Motion for Informative Outline of Aggravating Factors (Doc. 157); Motion for Disclosure of Jury Records (Doc. 158); Motion to Strike the Death Penalty as a Sentencing Option on the Grounds that the Federal Death Penalty Act Violates the Anti-Commandeering Provision of the Tenth Amendment and the Non-Delegation Doctrine (Doc. 162); Motion to Strike the Death Penalty as Unconstitutional Under *Ring v. Arizona* and the Fifth and Eighth Amendments (Doc. 163); Motion to Strike the Death Penalty on the Ground that it is Unconstitutional as Administered

Under the Federal Death Penalty Act (Doc. 164); and Motion to Clarify and Amend Order Regarding Disclosure of Jury Records (Doc. 231).

5. Mr. Bowers has recently filed motions, which are currently pending before the Court, including his Motion to Dismiss Counts 23-33, 38-39, and 52-63 of the Indictment Charging the Use of a Firearm in Connection with a Crime of Violence (Doc. 237); Motion to Dismiss Counts of the Indictment Charging Offenses Under the Hate Crimes Prevention Act and the Church Arson Act (Doc. 239); Motion to Strike Mental State Eligibility and Aggravating Factors from the Notice of Intent To Seek The Death Penalty (Doc. 241); and Motion for Reconsideration re Order on Motion to Compel (Doc. 244).

6. Mr. Bowers is currently awaiting receipt of the Western District of Pennsylvania jury records requested in his December 18, 2020, Motion for Disclosure. The Court granted this request on February 25, 2020 (Doc. 206), but disclosure by the Clerk's Office has been delayed due to the COVID-19 pandemic. (Doc. 247). The current date of disclosure is August 3, 2020.

7. Pursuant to the Court's June 25, 2020, briefing schedule (Doc. 247), Mr. Bowers will have 30 days after disclosure within which to file any motion challenging the jury plan. If the Clerk's Office is able to provide the data by August 3, 2020, Mr. Bowers' motion will be due on September 2, 2020.

8. The briefing schedule also sets October 1, 2020, as the date by which Mr. Bowers must file any motions to suppress and motions to change venue. The

government's responses to these motions are due on November 2, 2020, and Mr. Bowers' replies are due on November 16, 2020.

9. In light of the foregoing, and for the reasons stated at the June 25, 2020, Telephone Conference, counsel request that the Court extend the deadline for filing pretrial motions for 90 days, from July 22, 2020 to October 22, 2020.

Respectfully submitted,

/s/ Judy Clarke
Judy Clarke
Clarke Johnston Thorp & Rice, PC

/s/ Michael J. Novara
Michael J. Novara
First Assistant Federal Public Defender

/s/ Elisa A. Long
Elisa A. Long
Supervisory Assistant Federal Public Defender

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ORDER OF COURT

Upon consideration of the Motion to Extend the Time for Filing Pretrial Motions, it is hereby ORDERED that the motion is GRANTED.

IT IS ORDERED that any pretrial motions referred to in Local Criminal Rule 12 are due on or before October 22, 2020.

IT IS FURTHER ORDERED that the delay resulting from this extension of time (July 22, 2020 until October 22, 2020) be deemed excludable delay under the Speedy Trial Act 18 U.S.C. §3161 *et seq.* For the reasons stated in Mr. Bowers' motion, the Court finds that the ends of justice served by granting this continuance outweigh the best interest of the public and the defendant to a speedy trial. Specifically, the court finds that this continuance is justified given the complexity of the case, pursuant to 18 U.S.C. § 3161(h)(7)(A) and (B)(ii).

Date

Donetta W. Ambrose
United States Senior District Judge